

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

HASSAN CHUNN; NEHEMIAH McBRIDE;
AYMAN RABADI, by his Next Friend
MIGDALIZ QUINONES; and JUSTIN
RODRIGUEZ, by his Next Friend JACKLYN
ROMANOFF,

individually and on behalf of all others similarly
situated,

Petitioners,

-against-

WARDEN DEREK EDGE,

Respondent.

No. 20 Civ. 01590

**DECLARATION OF
KATHERINE ROSENFELD**

I, Katherine Rosenfeld, an attorney duly admitted to practice in the Eastern District of New York, declare under penalty of perjury and pursuant to 28 U.S.C. § 1746:

1. I am a partner at Emery Celli Brinckerhoff & Abady, LLP. Along with the Cardozo Civil Rights Clinic and Alexander A. Reinert, we represent the Petitioners and putative class.

2. I submit this declaration in support of Petitioners' request for a Temporary Restraining Order in the above-captioned case.

Additional Facts Since March 27, 2020 Filing of Petition

3. The Federal Bureau of Prisons ("BOP") announced on March 29, 2020 that a 49-year-old man with pre-existing medical conditions who was incarcerated in a federal prison in Louisiana died on Saturday, March 28, 2020 from complications from COVID-19, becoming the

first person in federal custody to die from the coronavirus.¹ On the evening of March 29, 2020, the Washington Post reported that an explosion of coronavirus cases is crippling the facility, with 30 incarcerated people having tested positive and 60 more in quarantine.²

4. Since filing the Petition on March 27, 2020, several incarcerated people who are confined at the Metropolitan Detention Center (“MDC”) have provided me with additional reports about conditions in the facility.

5. MDC’s Failure to Quarantine Individuals Who Were Exposed to the Individual Diagnosed with COVID-19. According to the BOP website, one person confined at the MDC has tested positive for COVID-19.³ Individuals confined at the MDC report that there are currently at least two people in the facility’s general population who were on the Intake Unit (Unit 41) at the same time as the person who tested positive for COVID-19. In other words, the two people from Unit 41 who were exposed to the COVID-19 positive individual are not quarantined and they are moving freely about their units. The facility’s monitoring of these two individuals is limited to taking their temperature once a day. This is despite the fact that signs posted around the facility state that the symptoms of COVID-19 may take between 2 and 18 days to appear.

6. The MDC Continues to Allow Movement Within the Facility. On the evening of Saturday, March 28, 2020, an additional person who had previously been held on Unit 41 was moved to Unit 42. Although the facility had previously told people that there would be no further movement out of Unit 41 and into other units, that is not in fact the case.

¹ Kevin Johnson, *Coronavirus claims first federal prisoner; 49-year-old drug offender dies in Louisiana*, USA Today (Mar. 29, 2020), <https://www.usatoday.com/story/news/politics/2020/03/29/patrick-jones-coronavirus-claims-first-federal-prisoner-louisiana/2935291001/>.

² https://www.washingtonpost.com/national/an-explosion-of-coronavirus-cases-cripples-a-federal-prison-in-louisiana/2020/03/29/75a465c0-71d5-11ea-85cb-8670579b863d_story.html

³ Coronavirus, Federal Bureau of Prisons, <https://www.bop.gov/coronavirus/> (last accessed on March 29, 2020 at 6:30pm).

7. Some People Confined at the MDC Are Scared to Report Their Symptoms Because the COVID-19 Positive Individual Was Placed in Solitary Confinement in Harsh Conditions. There are a number of people at the MDC who are coughing and showing signs of illness. However, some of these ill individuals are not reporting their symptoms because they are afraid that they will be locked up in solitary confinement. The person who tested positive for COVID-19 is being confined in a cell on Unit 84, and others at the MDC are hearing that he, as well as other people who are symptomatic and being held in isolation, are being denied showers, fed through the door slot, and not receiving clean sheets or underclothes.

8. The MDC Is Not Proactively Screening Most People for Symptoms, But Only Reacting to Those Who Report Illness. The MDC is not taking a proactive approach to identifying potentially sick people, other than a handful of incarcerated people with known past exposure. Instead, for the majority of people, the MDC is only responding to complaints from sick people who come forward. This approach fails to screen people who are asymptomatic, or people with symptoms who do not seek medical attention.

9. The MDC Has Quarantined the Kitchen Staff. A confined person who works in the kitchen (in which the meals for everyone in the facility are prepared) has come down with a fever, coughing, and other COVID-19 symptoms. The incarcerated people who normally work in the kitchen are now replaced by officers. The former kitchen workers are now under a quarantine.

10. The MDC is Not Enforcing Cleaning Protocols. To take one example, there was no cleaning of Unit 42 on Friday, March 27, or on Saturday, March 28, although the facility had said there would be increased cleaning.

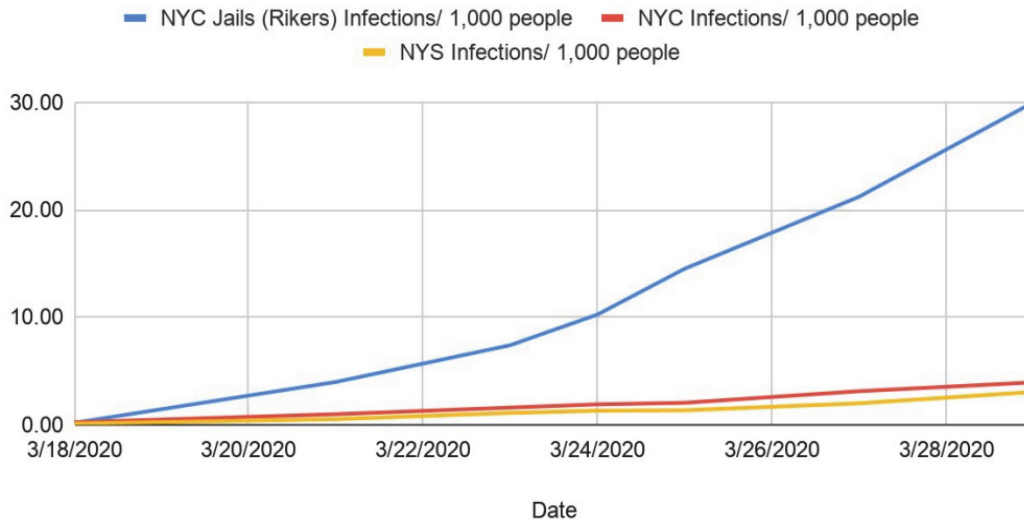
11. The MDC's response to the spread of COVID-19 inside the facility is dangerously inadequate and slow. Data from other correctional facilities make it clear that the time to act to stop the pandemic from consuming the population in a jail is before there is even one positive case. While the MDC has missed that opportunity, urgent action in the next few days could still save lives.

12. The following data and diagram showing infection rates on Rikers Island, as prepared by the Legal Aid Society, is instructive for how the virus may spread at the MDC. According to data analyzed and published on March 29, 2020, the current rate of infection for people confined on Rikers is 3.00%, or 29.29 infections per 1,000 people. This compares to the rate of infection in the community at large in New York City of 0.40%, or 3.9 infections per 1,000 people.

13. The first positive case on Rikers Island was diagnosed on or about March 19, 2020. As of March 29, 2020, there are now 139 positive cases in the jail.⁴

⁴ COVID-19 Infection Tracking in NYC Jails, The Legal Aid Society, <https://legalaidnyc.org/covid-19-infection-tracking-in-nyc-jails/> (last accessed Mar. 29, 2020).

NYC Jails (Rikers) Infections/ 1,000 people, NYC Infections/ 1,000 people and NYS Infections/ 1,000 people



The Individual Petitioners Are At High Risk For Serious COVID-19-Related Illnesses

Hassan Chunn

14. As alleged in the Petition filed on March 27, 2020, “Mr. Chunn is 46 years old. Mr. Chunn has been incarcerated for approximately three years. He is due to be released on April 18, 2020. Mr. Chunn has been diagnosed with Coronary Heart Disease. As of 2005, he was diagnosed with chronic heart failure. He has two stents in his heart. He is pre-diabetic. He also suffers from high blood pressure, seizures, hypertension and high cholesterol. During his incarceration at MDC, he has been hospitalized on at least two occasions at outside hospitals for extreme high blood pressure. He takes a number of medications including Plavix, Losapril, Norvax, and Lipitor. Mr. Chunn is critically vulnerable to COVID-19 because of his significant health problems.” Petition, ¶ 86.

15. According to medical records from Jamaica Hospital, Mr. Chunn was receiving care in 2017 for coronary artery disease, poorly controlled hypertension, and obesity.

16. Attached as Exhibit 1 is the Declaration of Carmen Nevarez dated March 29, 2020. Ms. Nevarez is the mother of Mr. Chunn and has personal knowledge of his medical conditions related to his COVID-19 vulnerabilities.

17. Mr. Chunn reports that earlier in March 2020, he observed an individual on his unit who was coughing so much that it appeared this person had bronchitis. That person was eventually removed from the unit but no further information was provided about whether he in fact had COVID-19.

18. On March 26, 2020, Mr. Chunn's counsel Kenneth Montgomery requested that Warden Edge grant a reduction in Mr. Chunn's sentence pursuant to title 18 U.S.C. § 3624, and release Mr. Chunn for the remainder of his short sentence, in light of Mr. Chunn's serious heart condition and other health problems, and his resulting vulnerability to the spread of COVID-19 in the MDC. A copy of Mr. Montgomery's letter is attached as Exhibit 2. Mr. Montgomery has received no response to his letter.

Nehemiah McBride

19. As alleged in the Petition filed on March 27, 2020, "Mr. McBride is 34 years old. Mr. McBride has been incarcerated since December 17, 2019, and subsequently was sentenced to 4 months' incarceration. He is due to be released on April 15, 2020. Mr. McBride has been diagnosed with asthma, which is severe, and he suffers from respiratory problems. Mr. McBride is currently experiencing breathing problems and wheezing. Mr. McBride is critically vulnerable to COVID-19 because of his significant health problems." Petition, ¶ 87.

20. Attached as Exhibit 3 is the Declaration of Tasha Moore dated March 29, 2020. Ms. Moore is the partner of Mr. McBride and has personal knowledge of his medical conditions related to his COVID-19 vulnerabilities.

21. On March 26, 2020, Mr. McBride's counsel Robert Baum from the Federal Defenders requested that Warden Edge grant a reduction in Mr. McBride's sentence pursuant to title 18 U.S.C. § 3624, and release Mr. McBride for the remainder of his short sentence to home confinement, in light of Mr. McBride's severe asthma and breathing problems and resulting vulnerability to the spread of COVID-19 in the MDC. A copy of Mr. Baum's letter is attached as Exhibit 4. Mr. Baum has received no response to his letter.

Ayman Rabadi

22. As alleged in the Petition filed on March 27, 2020, "Mr. Rabadi is 59 years old. Mr. Rabadi has been incarcerated for approximately 1 year, after being sentenced to 24 months for a wire fraud-related conviction of which he has served approximately 14 months. Mr. Rabadi has been diagnosed with a serious heart condition, anxiety and diabetes. Mr. Rabadi suffered a heart attack approximately six years ago, and thereafter he had several stents placed in his heart. He has a tumor on one of his kidneys which is being monitored via ultrasound. He takes medication for high blood pressure, cholesterol, and blood thinners. He also suffers from severe anxiety and depression. Mr. Rabadi is critically vulnerable to COVID-19 because of his significant health problems." Petition, ¶ 88.

23. Mr. Rabadi is scheduled to be released on July 19, 2020. Mr. Rabadi has a life partner of 36 years, four children, and two grandchildren.

24. Attached as Exhibit 5 is the Declaration of Migdaliz Quinones dated March 29, 2020. Ms. Quinones is the partner of Mr. Rabadi and has personal knowledge of his medical conditions related to his COVID-19 vulnerabilities.

25. Mr. Rabadi's chronic, serious medical conditions are documented in various court filings in his criminal case. In a "Medical Attention Form" dated April 19, 2013, S.D.N.Y.

Magistrate Judge Davison ordered that the Warden of any detention facility confining Mr. Rabadi provide him with necessary medical treatment for his heart condition, anxiety and high blood pressure. A copy of the Medical Attention Form is attached as Exhibit 6.

26. Mr. Rabadi suffered a stroke in jail last year. He reports that he takes over a dozen different medications a day, and that he believes that he will die if he becomes infected with COVID-19.

27. I am informed by Mr. Rabadi that he is spending as much time as possible in his cell to avoid contact with others. However, he shares a small cell with another person. He also must leave his cell to get food. Mr. Rabadi states that there are many people in the facility who are coughing and sick, and conditions are bad.

28. On March 29, 2020, Mr. Rabadi described current conditions at the MDC as follows:

Things are very bad here. We don't have any gloves, masks or any personal protective equipment. Also, we can't social distance from each other. There are approximately 90 people in a small area because this is considered a "camp" status floor. We are work cadres and have no space to get fresh air. Our cells are small (6 x 12), there are 2 people per cell and we are locked in our unit during the day. They came up here and told us that there were 2 officers and 1 inmate that are infected. We found out there are many more inmates and probably guards with the virus. One of our friends we maybe think he got the virus. He walks around with a mask and he has a deep cough and we are freaking out and are not doing well mentally. They tell us to wash our hands but they don't have any hand sanitizer and they tell us to use soap, but we don't have soap because they don't have any. We tried to buy soap from commissary, but commissary is out for 3 weeks. We are in big trouble here. Not just me, but everyone in here is freaking out because we cannot get any information or anyone to listen to us. We should ALL go home since we are "camp" status inmates. . . . I only have 35 days left. I am 60 with health problems. Please help me before I die. I want to be with my family where I am safe.

Justin Rodriguez

29. As alleged in the Petition filed on March 27, 2020, “Mr. Rodriguez is 26 years old. Mr. Rodriguez is scheduled to be released on June 9, 2020. Mr. Rodriguez suffers from asthma. Mr. Rodriguez is critically vulnerable to COVID-19 because of his significant health problems. Mr. Rodriguez requested an inhaler from BOP staff but as of this filing has not received one.” Petition, ¶ 89.

30. On March 27, 2020, Mr. Rodriguez’s counsel Donald D. Duboulay requested that Warden Edge grant a reduction in Mr. Rodriguez’s sentence pursuant to title 18 U.S.C. § 3624, and release him for the remainder of his short sentence to home confinement, in light of Mr. McBride’s lifelong asthmatic condition and resulting vulnerability to the spread of COVID-19 in the MDC. A copy of Mr. Duboulay’s letter is attached as Exhibit 7. Mr. Duboulay has received no response to his letter.

31. Attached as Exhibit 8 is the Declaration of Jacklyn Romanoff dated March 29, 2020. Ms. Romanoff is the mother of Mr. Rodriguez and has personal knowledge of his medical conditions related to his COVID-19 vulnerabilities.

32. Attached as Exhibit 9 is the Declaration of Dr. Jaimie Meyer, dated March 23, 2020.

33. Due to the restrictions currently in place, each of the family member declarants—Carmen Nevarez, Tasha Moore, Migdaliz Quinones, and Jacklyn Romanoff—signed their declarations remotely and electronically by sending the undersigned an electronic copy of their signature to append to their final declaration.

Executed on: March 30, 2020
Speculator, New York

/s/
Katherine Rosenfeld